

Senate Engrossed

**FILED**

**JANICE K. BREWER  
SECRETARY OF STATE**

State of Arizona  
Senate  
Forty-seventh Legislature  
Second Regular Session  
2006

CHAPTER 85

# **SENATE BILL 1176**

AN ACT

AMENDING SECTION 13-4436, ARIZONA REVISED STATUTES; RELATING TO VICTIMS' RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-4436, Arizona Revised Statutes, is amended to  
3 read:

4 13-4436. Effect of failure to comply

5 A. THE FAILURE TO COMPLY WITH A VICTIM'S CONSTITUTIONAL OR STATUTORY  
6 RIGHT IS A GROUND FOR THE VICTIM TO REQUEST A REEXAMINATION PROCEEDING WITHIN  
7 TEN DAYS OF THE PROCEEDING AT WHICH THE VICTIM'S RIGHT WAS DENIED OR WITH  
8 LEAVE OF THE COURT FOR GOOD CAUSE SHOWN. AFTER THE VICTIM REQUESTS A  
9 REEXAMINATION PROCEEDING AND AFTER THE COURT GIVES REASONABLE NOTICE, THE  
10 COURT SHALL AFFORD THE VICTIM A REEXAMINATION PROCEEDING TO CONSIDER THE  
11 ISSUES RAISED BY THE DENIAL OF THE VICTIM'S RIGHT. EXCEPT AS PROVIDED IN  
12 SUBSECTION B, THE COURT SHALL RECONSIDER ANY DECISION THAT ARISES FROM A  
13 PROCEEDING IN WHICH THE VICTIM'S RIGHT WAS NOT PROTECTED AND SHALL ENSURE  
14 THAT THE VICTIM'S RIGHTS ARE THEREAFTER PROTECTED.

15 ~~A.~~ B. The failure to use reasonable efforts to perform a duty or  
16 provide a right is not cause to seek to set aside a conviction AFTER TRIAL ~~or~~  
17 ~~sentence~~. FAILURE TO AFFORD A RIGHT UNDER THIS CHAPTER SHALL NOT PROVIDE  
18 GROUNDS FOR A NEW TRIAL. A VICTIM WHO WAS GIVEN NOTICE OF A PLEA OR  
19 SENTENCING PROCEEDING MAY MAKE A MOTION TO REOPEN A PLEA OR SENTENCE ONLY IF  
20 THE VICTIM WAS NOT VOLUNTARILY ABSENT FROM THE PROCEEDING AND HAS ASSERTED  
21 THE RIGHT TO BE HEARD BEFORE OR DURING THE PROCEEDING AT ISSUE AND THE RIGHT  
22 TO BE HEARD WAS DENIED AND, IN THE CASE OF A PLEA, THE ACCUSED HAS NOT PLED  
23 TO THE HIGHEST OFFENSE CHARGED. THIS SUBSECTION DOES NOT AFFECT THE VICTIM'S  
24 RIGHT TO RESTITUTION, WHICH THE VICTIM MAY SEEK TO ENFORCE AT ANY TIME.

25 ~~B.~~ C. Unless the prisoner is discharged from ~~his~~ THE PRISONER'S  
26 sentence, the failure to use reasonable efforts to provide notice and a right  
27 to be present or be heard pursuant to this chapter at a proceeding that  
28 involves a post-conviction release is a ground for the victim to seek to set  
29 aside the post-conviction release until the victim is afforded the  
30 opportunity to be present or be heard.

31 ~~C.~~ D. If the victim seeks to have a post-conviction release set aside  
32 pursuant to subsection ~~B~~ C, the court, board of executive clemency or state  
33 department of corrections shall afford the victim a reexamination proceeding  
34 after the parties are given notice.

35 ~~D.~~ E. A reexamination proceeding conducted pursuant to this section  
36 or any other proceeding that is based on the failure to perform a duty or  
37 provide a right shall commence not more than thirty days after the  
38 appropriate parties have been given notice that the victim is exercising ~~his~~  
39 THE right to a reexamination proceeding pursuant to this section or to  
40 another proceeding based on the failure to perform a duty or provide a right.

**APPROVED BY THE GOVERNOR APRIL 10, 2006.**

**FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 10, 2006.**